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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/559,704
Filing Date: April 27, 2000
Appellant(s): ZOECKLER, MICHAEL D.

Steve McLary
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 9/21/09 appealing from the Office action mailed 5/19/09.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5746871	Walsh	5-1998
5097651	Decottignies et al.	3-1992

5447270	McNown	9-1995
4177715	Meyers	12-1979

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 5-7, 11, 13, 25, 31-33, and 77 rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Walsh (US 5,746,871).

Walsh discloses a method for forming carton blanks with multiple panels including top, sides and bottom (see column 1, lines 45+) comprising advancing a web of paperboard 2 (with two surfaces) along a path; progressively applying and adhering at least a first and second ribbon of reinforcing material 6 (to a first inner surface) with a width less than the paperboard to edge panel portions; the paperboard has

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longitudinally extending panel portions defined by fold lines 54 (formed on both sides of the web 2); see figures 2 and 5-6.

Carton blanks are cut from the laminated structure and later formed into a carton (score lines 54 are adjacent to edge of ribbon 6) to form individual carton blanks for receiving articles (see figures 1 and 2, column 1, lines 24-65). Because the layers are added thicknesses to an original web, the resulting structure is considered reinforced with the paperboard layer on the outside of the container (strips on the inside).

An additional ribbon 10 is applied to the composite layers in order to adhere/laminate the structure together forming a double thickness of reinforcement and the innermost layer; see figure 1.

The disclosure is not clear as to the exact positioning of the ribbons of reinforcing material with respect to fold lines 54. The figures and disclosure are considered to teach reinforcing both top and bottom panel portions which are defined by longitudinal fold lines 54 by ribbons 6. This would anticipate the claimed limitations as the ribbon 6 would coincide with the fold line 54 and therefore not extend beyond.

As previously argued, appellant takes the viewpoint that ribbon layer 6 extends beyond fold line 54, although this teaching is not supported by the reference. Walsh discloses modified cuts 52 which sometimes extend through ribbon layer 6 (see figures 5-7) however does not provide distinguishing reference numerals for the multiple panel portion cuts other than 52. Thus the examiner provides the following alternate rejection due to the obviousness of positioning reinforcing ribbons as desired:

It would have been obvious to one of ordinary skill in the art to position the reinforcing ribbons without extending beyond the longitudinal fold lines in order to reinforce the top and bottom panels without interfering with the folding procedure in constructing the completed carton.

Regarding claims 7 and 32, central ribbon 6 is considered overlying an intermediate panel portion as claimed and is applied in order to provide for two adjacent blanks after the cutting procedure, however note that the longitudinal fold lines 54 encompass either side of the are adhered to the opposing edges therefore overlie substantially but not beyond the intermediate panel portion; see figure 2.

Claims 9-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walsh (US 5,746,871) in view of Decottignies et al. (US 5,097,651).

Walsh does not directly disclose printing indicia on the ribbon, however Decottignies et al. teach printing indicia on reinforcing material 5 before adhesion to web 4. It would have been obvious to one of ordinary skill in the art at the time of the invention to include printing indicia as desired for product enhancement.

Claims 2, 14-15, and 26-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walsh (US 5,746,871) in view of McNown (US 5,447,270).

Walsh does not directly disclose using paperboard (trim or otherwise) for the reinforcing ribbons 6. However, McNown teaches manufacturing a paperboard carton with a reinforcing panel portions made of paperboard strips along score lines in order to

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increase structural integrity. It would have been obvious to one of ordinary skill in the art to use a reinforcing ribbon of paperboard (trim, cull, etc.) as taught by McNown to reinforce support to the cartons of Walsh along score/fold lines for efficient use of paperboard.

Claims 78-81 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walsh (US 5,746,871) in view of Meyers (US 4,177,715).

Walsh does not directly disclose a third ribbon that is partially adhered to the web however Meyers teaches a process of manufacturing a reinforced paperboard container comprising partially adhering a third ribbon 54 of material to a continuous web 51 not overlying any longitudinal fold lines; see figures 1-3.

The third ribbon is partially adhered to the web 51 to a longitudinal fold line for folding the second unjoined portion into an internal divider for the container.

It would have been obvious to one of ordinary skill in the art at the time of the invention to include the process of partially adhering a ribbon as taught by Meyers in the invention to Walsh for providing for a box with an internal partition element as desired.

(10) Response to Argument

During patent examination, the pending claims must be interpreted as broadly as their terms reasonably allow. *In re Zletz*, 893 F.2d 319, 321, 13 USPQ2d 320,322 (Fed. Cir. 1999). In determining the patentability of claims, the PTO gives claim language its broadest reasonable interpretation" consistent with the specification and claims. *In re Morris*, 127 F.3d 1048, 1054, 44 USPQ2d 1023, 1027 (Fed. Cir. 1997). See MPEP §

904.1. Limitations not appearing in the claims cannot be relied upon for patentability; *In re Self*, 671 F.2d 1344, 1348 (CCPA 1982). Particular embodiments appearing in the written description are not to be read into the claims if the claim language is broader than the embodiment; see *Superguide Corp. v. DirecTV Enterprises, Inc.*, 358 F.3d 870, 875 (Fed.Cir. 2004).

Regarding the reinforcing ribbons of Walsh, note that any additional layer in a laminated structure will inherently provide additional structural reinforcement given the properties of the layer as well as the properties of any adhesive applied. Walsh clearly shows laminating/combining multiple layers of web ribbons together in order to form material to be processed into packaging blanks; as shown in figures 1-12/

Regarding the fold lines of Walsh, note that Walsh clearly depicts longitudinal fold lines as noted supra. In response to appellant's argument that the references fail to show certain features of appellant's invention, it is noted that the features upon which appellant relies (i.e., performing a folding process prior to adhering ribbons of reinforcing material) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). The web is advanced as claimed.

Regarding the positioning of ribbons in relation to fold lines, note that one of ordinary skill in the art could easily recognize problems with folding laminated structures as this problem is recognized and is replete throughout the prior art including the cited prior art of record; Walsh accomplishes relief for transverse fold lines (also labeled 52)

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by cutting away portions 64 of the rigid layers; see figure 5; McNown figure 1c, col. 4, lines 50+; Mathieu et al. (US 6,015,084); Balin (US 4,905,864); Knecht (US 5,393,295)

Note that the alleged ambiguity of Walsh is not sufficient to provide novelty to the claims. One of ordinary skill in the art would easily recognize that problems might exist when folding laminated thicknesses of webs including slippage, bubbling, buckling, etc. as is taught throughout the prior art. One of ordinary skill in the art is not an automaton; see *KSR Int. v. Teleflex 550 US__* (2007). The modification of positioning the outer layer with respect to the inner layer is not more than the predictable use of prior-art elements according to their established functions.

Figure 2 of Walsh shows a wider strip 6 in the middle which is then cut so as to provide edge reinforcement sections extending on the two opposing longitudinally extending sides. Fold lines 54 are “formed in the relatively rigid material 2”; see column 3, lines 43+. There is no mention of fold lines 54 being formed in strip material 6 but only in material 2; see col. 3, lines 42+. Note that the discussion of cut lines is specific to each layer see column 4. The proportionality argument presented on page 13 is not agreed with or persuasive. Note when the reference does not disclose that the drawings are to scale and is silent as to dimensions, arguments based on measurement of the drawing features are of little value. See *Hockerson-Halberstadt, Inc. v. Avia Group Int 'l*, 222 F.3d 951 (Fed. Cir. 2000); MPEP 2125.

Walsh discloses multiple embodiments in Figures 1-12. Appellants arguments to single specific figures are not agreed with as they present mere speculation as to the scope of the complete teachings of Walsh.

Claim 7 and 32 are addressed supra as the issue raised is the same as that to claim 1.

Regarding Decottignies, the arguments presented are merely speculative and are not agreed with. The claims fail to distinguish over the prior art. While evaluating obviousness, one must ask whether the improvement is more than the predictable use of prior-art elements according to their established functions; see *KSR Int. v. Teleflex* 550 US__ (2007).

To determine whether there was an apparent reason to combine the known elements in the way a patent claims, it will often be necessary to look to interrelated teachings of multiple patents; to the effects of demands known to the design community or present in the marketplace; and to the background knowledge possessed by a person having ordinary skill in the art; *ibid*.

The analysis need not seek out precise teachings directed to the challenged claimed specific subject matter, for a court can consider the inferences and creative steps a person of ordinary skill in the art would employ. Under the correct analysis, any need or problem known in the field and addressed by the patent can provide a reason for combining the elements in the manner claimed; *ibid*.

Regarding McNown, McNown clearly shows reinforcing longitudinal panel portions by reinforcing only adjacent portions of a score line. One of ordinary skill in the art at the time of the invention would have been able to use this teaching for the predictable outcome of reinforcing the selected portions as desired. Note that a person of ordinary skill in the art would recognize that it would improve similar devices in the

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same way, using the technique is obvious unless its actual application is beyond that person's skill; see *KSR Int. v. Teleflex 550 US__*(2007).

(11) Related Proceeding(s) Appendix

Copies of the court or Board decision(s) identified in the Related Appeals and Interferences section of this examiner's answer are provided herein.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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